

Congress of the United States

Washington, DC 20515

[[DATE]]

Travis Voyles
Vice Chairman
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, D.C. 20001

Dear Vice Chairman Voyles,

We write in response to amendments proposed by the Advisory Council on Historic Preservation (ACHP) to the regulations (36 C.F.R. Part 800) implementing Section 106 of the *National Historic Preservation Act (NHPA)*. The *NHPA* was enacted in 1966 in the wake of the development of the Interstate Highway System, urban renewal, and other significant infrastructure efforts to preserve the rich history that makes our nation and its communities unique. Section 106 requires federal agencies to assess the effects of infrastructure projects on historic properties and their preservation. In order to best do that, 36 C.F.R. part 800 enumerates an important process of consultation between the federal government, States, Tribes, and communities. Without this process, the success of the *NHPA* in preserving our nation's history would be diminished.

ACHP's proposed rulemaking would drastically overhaul how historic preservation is considered nationwide. These revisions include:

- Concentrating all decision-making regarding potential adverse effects on historic properties within the relevant federal agency;
- Making public comment optional during the Section 106 process, and
- Limiting consideration of adverse effects and protections of historic properties' character.

While we recognize the need to ensure the Section 106 process remains up to date and appropriately tailored, this proposal undermines decades of successful historic preservation efforts and congressional intent.

The Section 106 process has traditionally been an informed and collaborative planning process that incorporates community needs, expertise from State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs), and federal stewardship. These amendments would significantly alter this collaboration, relegating SHPOs and THPOs to mere commenters without meaningful advisement – when in fact they are statutorily recognized partners in the Section 106 consultation process. The proposal also contradicts itself, making consultation with SHPOs and THPOs optional and striking all language recognizing the unique nature of the federal government's relationship with Tribes and tribal sovereignty, while stating it's the responsibility of federal agencies to identify and invite relevant Tribes and Native Hawaiian organizations to be consulting parties.

The proposal would also give federal agencies sole power to determine the necessity of public comment. It directs agencies to consider, "any delays that may be created by the process of seeking public comment," but

such a restriction would ensure that the *NHPA* is used merely as a litigation tool rather than a sound process that balances infrastructure needs with historic preservation. Public comment under Section 106 is typically only sought when an adverse effect is found; this occurs in just two percent of cases.¹ In fact, just 285 federal lawsuits filed since 1991 have included an *NHPA* claim; of the more than 120,000 relevant undertakings per year, an average of eight are subject to *NHPA*-related lawsuits.² That low figure is due to a robust consultation process that allows federal agencies and partners like SHPOs and THPOs to identify historic properties, avoid adverse effects, and resolve potential conflicts before they become significant project delays. Efforts to improve the efficiency and predictability of the Section 106 process should focus on actual points of delay, including slow initiation of consultation by federal agencies, incomplete project information, inadequate identification of historic properties, insufficient agency staffing, and bipartisan efforts to increase authorization levels for the Historic Preservation Fund.

These amendments also redefine *adverse effect* as it relates to a historic property, prohibiting considerations of impacts later in time, farther removed in distance, or cumulative. While permitting regulations should be appropriate in scope to not overextend agency analysis, this change ignores the fact that current regulations still require such effects to be caused by the undertaking. Additionally, the proposal removes consideration of the, “character of a property’s use or of physical features within the property’s setting that contribute to its historic significance,” and the, “introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features.” It would also define a *historic property* as something that, “includes, or has included at some point in the past, tangible human improvements and is geographically compact,” excluding, “noncompact, unimproved natural features such as mountains, valleys, bodies of water, or landscapes, including ethnographic landscapes...” in direct contravention of the statutory definition of *historic property*. These changes fail to consider Tribal histories, religions, cultural practices, lifeways, and continuing responsibilities thus damaging the federal governments trust and treaty responsibilities.

Finally, this proposal was considered through a rushed and nontransparent process, giving ACHP members just one week to vote on a substantial rewrite of these regulations without any input from other parties, including Tribal consultation required under ACHP’s own policy. While it is important to regularly reevaluate our permitting processes, such action should be done in coordination with Congress and appropriate stakeholders to ensure the efficiency and effectiveness of Section 106 while preserving its core consultation requirements.

The Section 106 process has long demonstrated an ability to balance our nation’s infrastructure needs with protecting our history and elevating the stories of Tribes and communities nationwide. This proposal rejects decades of those success stories, the importance of historic sites across the country, and Tribal sovereignty. We urge you to reconsider this rulemaking and work with Congress to enact bipartisan, sustainable *NHPA* reforms that protect our nation’s history.

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¹ “Section 106 Review,” Advisory Council on Historic Preservation, https://www.achp.gov/sites/default/files/whitepapers/2025-07/2025_Section%20106_072225v2.pdf.

² “ACHP Advances New Regulations that Devastate Protections for Historic Properties,” Cultural Heritage Partners,” https://culturalheritagepartners.com/wp-content/uploads/2026/08/2025_section-106_072225v2.pdf